

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2179 OF 1999

Homi Phiroze Ranina,
Indian Inhabitant having
his residence at 181,
Backbay Reclamation,
Mumbai 400 020.

....Petitioner.

V/s

1. The Additional Registrar
of Companies Maharashtra,
100-Everest, 1st Floor,
Marine Drive, Mumbai 400 002

2. State of Maharashtra

.....Respondents.

Mr. H.P. Ranina for the petitioner.

Mr. S.S. Tatkar, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 12th January, 2006

ORAL JUDGMENT:

1. Heard the learned Counsel for the petitioner.

None appears for respondent No.1 though served.

2. The petitioner has filed this application for quashing the process which has been issued against him. It is submitted by the learned Counsel appearing on behalf of the petitioner that the petitioner, for all time, was non-executive Director of the Company and was neither in charge of nor responsible for

day-to-day affairs of the Company. He submitted that this fact has not been disputed by the complainant at any time. He submitted that even in the complaint no averment has been made regarding the role which is allegedly played by the petitioner in the commission of the alleged offence. He has invited my attention to the complaint filed by the complainant in the Court of Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Bombay.

3. Though the respondent No.1 is served, no reply has been filed and the averments made in the application are not controverted by the respondent No.1.

4. It is now settled position in law that non-executive Directors or technical Directors or Directors who are not full time Directors or who are not connected with the day-to-day affairs of the Company are not liable to be prosecuted for the alleged lapses of the acting Directors. It is also settled that in order to bring the other Directors within the purview of the alleged offence, it is necessary to spell out in so many words, by making specific averments and giving material particulars, the role played by such Directors or other persons. A perusal of the complaint discloses that no such

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averment has been made in the complaint. Only a bald averment is made, stating that accused Nos. 2 to 8 were at all relevant times the Directors of the accused No.1 - Company. No reply has been given to the notice which was sent by the petitioner in which he has categorically denied his alleged involvement in the management and affairs of the Company or its day-to-day functioning. It is also not disputed that the petitioner is a non-executive Director of the Company.

5. In view of the above, the process issued against the petitioner is liable to be quashed and the complaint filed against the present petitioner being Case No.151/RC of 1997 which is numbered as C.C. No.3897 of 2000 pending before the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Bombay is also quashed and set aside qua the petitioner.

6. Application is allowed in the above terms.

V.M. KANADE, J.